

City of Brisbane

Agenda Report

Date: April 27, 2017
To: Mayor & City Council
From: City Manager *AK*
Subject: Consultant and Legal Services to examine School District Reorganization

Recommendation

Approve attached contract with Dannis, Woliver & Kelley.

Background

As the City of Brisbane has been reviewing the Baylands project the long term organization of school districts providing K-12 education has come up as an issue. This is a complicated issue as three school districts currently have jurisdiction within the City of Brisbane. Currently only two of those districts have students.

The purpose of the study would be to have a thorough understanding the financial issues and opportunities of combining one or more districts as well as the legal roadmap if the parties wish to pursue a change in boundaries and/or consolidation. The Superintendents of all three effected districts (Brisbane Elementary, Bayshore Elementary and Jefferson Union High School District) have been consulted on this project and will be critical in developing accurate information for the study.

Although the City is not a party to any ultimate decisions we can play a role of bringing the parties together and providing for the funding of the study. The study will be paid for by the Baylands Development applicant, UPC.

Financial Impact

Initial scope of work on the Legal costs are estimated to be from 13k to 19k. In addition a fiscal analysis firm will be selected. Identification of that cost is ongoing and will be presented prior to the Council meeting.

Cost reimbursement will be through our agreement with UPC.

DANNIS WOLIVER KELLEY

Attorneys at Law

MARILYN J. CLEVELAND

Attorney at Law

mcleveland@DWKesq.com

San Francisco

December 6, 2016

VIA EMAIL AND U.S. MAIL

Clay Holstine
City Manager
City of Brisbane
50 Park Place
Brisbane, CA 94005
clayh@ci.brisbane.ca.us

Re: Revised Proposal For School District Reorganization Services

Dear Clay:

You requested we prepare a proposal for providing legal support on a potential reorganization of one or more school districts which currently serve the City of Brisbane (City). Following, please find a short summary of the services we provide and our experience with school district reorganization matters as well as information on the attorneys who would be working with the City on this matter. We have also included an outline of the proposed initial scope of work as well as a schedule and our rates. Further, we have updated the proposal with an estimated cost of the initial scope of work.

Reorganization Expertise

Dannis Woliver Kelley (DWK) provides the full scope of services related to all types of reorganization. While we traditionally serve as counsel for school districts, we have also assisted other government entities involved in school district reorganization. Services we provide regularly include:

- Provide general advice and counsel regarding potential, threatened, or desired reorganizations, including impacts of reorganization on bonded indebtedness, bonding capacity and asset division and distribution; employee rights, use of charter schools and other educational alternatives in lieu of reorganization; and CEQA compliance as it relates to reorganization proposals.
- Negotiate mutually desired territory transfers and boundary adjustments between adjacent districts, including negotiation of all related contractual terms and conditions.

275 Battery Street
Suite 1150
San Francisco, CA 94111
TEL 415.543.4111
FAX 415.543.4384

115 Pine Avenue
Suite 500
Long Beach, CA 90802
TEL 562.366.8500
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1682 Novato Boulevard
Suite 251
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TEL 415.543.4111
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2485 Notre Dame Boulevard
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TEL 530.343.3334
FAX 530.924.4784

555 Capitol Mall
Suite 645
Sacramento, CA 95814
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1065 Higuera Street
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- Represent parties in front of the County Committee on School District Organization and the State Board of Education in relation to reorganization proposals.

Recently, we have provided these services in relation to several reorganization matters:

- As counsel for the Centinela Valley Union High School District we worked collaboratively with the Wiseburn School District to resolve a decade-old attempt to unify the Wiseburn School District. Resolution involved special legislation, a reorganization plan recommended by the Los Angeles County Committee on School District Organization and adopted by the State Board of Education, creation of two joint powers authorities, a memorandum of understanding between the districts, and electorate approval. The joint powers agencies were formed specifically to address the loss of assessed valuation caused by the withdrawal of the Wiseburn district from Centinela Valley.
- Advised the San Diego County Committee on School District Organization with regards to a petition to unify an elementary school district and the impacts on school district facilities and bonds. Previously, worked with staff for the County Committee to draft a memorandum of understanding addressing implementation of unification of a portion of a high school district.

The work with the City would be handled primarily by Marilyn Cleveland and William Tunick, with assistance from associates as needed.

Marilyn Cleveland has represented school and community college districts in the areas of real property, business, finance and construction, including asset management, property acquisition, disposition by sales, leases, joint ventures and exchanges, environmental compliance, school district organization, public bidding and contracting, energy efficiency and other school construction issues since 1990. She also deals with financing, including parcel tax measures, and land use issues. Marilyn's civil litigation experience has emphasized real property, eminent domain, inverse condemnation, conflicts of interest, Brown Act, the California Environmental Quality Act (CEQA), other environmental issues and construction.

William Tunick represents school districts before all levels of state and federal courts. Focusing on appellate litigation, William has represented clients on issues ranging from special education to charter school renewal to school district taxing authority. In addition to his litigation practice, William advises clients on a variety of governance and business matters, leveraging his prior experience representing non-profit organizations, candidates, and elected officials on issues involving elections and First Amendment protections for political speech. William has also guided school districts through the development and implementation of parcel taxes and has particular experience with the California Voting Rights Act and the school district reorganization process.

Background

Currently the City is served by three school districts. The Brisbane School District (Brisbane) provides K-8 educational services for the large majority of the City. The Bayshore School District (Bayshore) provides K-8 educational services for portions of Daly City and the

remaining portion of the City (which is almost exclusively uninhabited land). The Jefferson Union High School District (Jefferson) includes both Brisbane and Bayshore and provides 9-12 educational services for the entire City, as well as for several surrounding communities.

We understand there have been previous discussions and analyses of the potential to reorganize Brisbane, potentially through a merger with Bayshore. There have also been efforts to locate a charter high school in Brisbane. Historically, the large majority of high school students from Brisbane either attend a Jefferson high school located in Pacifica or private school.

Currently, the City is considering a large redevelopment project which covers the northeast section of the City, known as "Baylands." While Baylands sits within the City limits, it is not within the jurisdiction of Brisbane, but rather within the boundaries of Bayshore. The exact plan for Baylands is still being developed, but it is likely to include a large amount of high-value commercial property and potentially some residential units. The final approval of Baylands will rest with the voters of the City (after approval by the City Council).

Given the size of Baylands and its potential financial impacts on all local entities, members of the City Council saw the development as an opportunity to again explore the potential for reorganization of school districts serving the City. While it is not clear what form such a reorganization would take, we understand the City's goal would be to ensure that students in the City receive a fair share of the benefit that Baylands will provide to the surrounding communities.

Initial Scope of Work

With our current understanding of the background and City's goals, we propose the City begin with an initial scope of work which would lay a foundation for the next steps. Specifically, we propose that the City contract with a school finance consultant (through DWK) to complete a two pronged analysis focusing on: (1) the current funding/finances of local school districts; and, (2) the impact of Baylands on that funding. Such an analysis would provide specific details on the source/distribution of property tax proceeds, State funding, bond issuance, assessed value, bond repayment, bonding capacity, parcel tax proceeds, and redevelopment proceeds. It would also provide the City with basic information about the school districts. If the contract was performed through our firm, the information would be confidential until/unless the City decided to provide it to others. (We could provide recommendations for a consultant to ultimately be selected by the City.)

With this additional background information, we would then prepare a legal analysis for the City which walked through each of the potential reorganization options, the impacts of each option, and the process which would be required to effectuate each option. Options examined may include: a merger of Brisbane and Bayshore as one K-8 district, unification of Brisbane and Bayshore into one K-12 district, formation of a high school district which overlays Bayshore and Brisbane operated by Brisbane as a joint administration district, unification of Brisbane into a K-12 district, a transfer of the Baylands territory from Bayshore to Brisbane, a transfer of the Baylands territory from Bayshore to Brisbane combined with unification of Brisbane, or an agreement (with or without any reorganization) between Bayshore and Brisbane regarding access to the additional resources provided by Baylands.

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This initial scope will provide concrete information and options which can help inform how the City approaches the school districts and will hopefully avoid the initial discussions becoming bogged down by confusion/disagreement over the underlying facts. Once the initial study and our analysis is complete, we would foresee another meeting with the City to discuss the options and the best approach for the initial conversations with the school districts. Our further services would be shaped by the outcome of those initial conversations, but could include additional in-depth analysis of specific proposals, working with a consultant to develop a reorganization plan, and working with the parties to develop mutually agreed plans and present those plans to local/state agencies as necessary. These additional tasks are not included in the initial scope or estimate of costs.

Schedule & Estimate for Initial Scope

We anticipate that the initial scope of work, including the fiscal and legal analyses would take 2-3 months to complete. The rates for our services are detailed in the attached agreement and would be \$325 per hour for Marilyn Cleveland and William Tunick. At this time we estimate that the initial scope of work above (which would include one additional meeting with City officials), would require approximately 40-60 hours at a cost of \$13,000-\$19,500. The cost of the recommended fiscal analysis would be separate, although billed through DWK. While we cannot estimate the cost of that analysis, we would be happy to work with the City to obtain proposals from consultants regarding the potential cost of such a study.

Finally, we understand that the Baylands developer has committed to paying for work on this matter. To be clear, DWK's client will be the City, and our advocacy, regardless of whether the City is reimbursed by the developer for payment of our fees, will be solely for the interests of the City. Attached, please find an agreement between the City, Baylands developer, and DWK setting forth this arrangement and the particulars of our services. If the City or the Baylands developer have any questions about this agreement, please let us know. Otherwise if both parties sign and return the agreement, we can move forward with this project.

Please do not hesitate to contact us if you have any questions regarding this matter.

Sincerely,

DANNIS WOLIVER KELLEY



Marilyn J. Cleveland

MJC:kgt

Enclosures

cc: William B. Tunick

**AGREEMENT FOR PROFESSIONAL SERVICES &
THIRD PARTY PAYMENT OF FEES**

This Agreement for Professional Services and Third Party Payment of Fees is made and entered into this 15th day of September, 2016, by and among the **City of Brisbane**, hereinafter referred to as "Client," the **Universal Paragon Corporation**, hereinafter referred to as "Payor," and **Dannis Woliver Kelley**, a professional corporation, hereinafter referred to as "Attorney."

In consideration of the promises and the mutual agreements hereinafter contained, Client, Payor, and Attorney agree as follows:

Client hereby retains Attorney to advise, counsel and assist Client with a potential reorganization ("Reorganization"), which services shall commence with assessment and advice related to proposals for the Reorganization developed by Payor, as petitioner for the Reorganization, and Client, and which legal services may continue thereafter. Client shall be truthful with Attorney, cooperate with Attorney, keep Attorney informed of developments, and perform the obligations it has agreed to perform under this Agreement.

Payor agrees to pay Attorney's invoices for Attorney's legal representation of Client in connection with the Reorganization, as described further herein.

Prior to the start of Attorney's legal representation of Client, Payor shall deposit \$20,000 with Attorney ("Retainer Deposit"), which sum shall be deposited in a trust account for the purpose of protecting Attorney in the event of nonpayment. The Retainer Deposit will not alter Payor's obligation to pay monthly invoices from DWK within thirty (30) days from the date of the invoice, even if such invoices exceed the amount of the Retainer Deposit. DWK may use the Retainer Deposit to pay for all costs and expenses incurred by DWK in representing Client, as well as DWK's fees for its legal services. Payor hereby authorizes DWK to withdraw monies from the Retainer Deposit in DWK's trust account should Payor fail to pay any outstanding invoice for more than forty-five (45) days from the date thereof. If and when any part of the Retainer Deposit is used for this purpose, Payor shall replenish the Retainer Deposit within fifteen (15) days after DWK's demand. Payor may be required to increase the amount of the Retainer Deposit sufficient to cover up to three months' projected billings. Failure to replenish or increase the Retainer Deposit as requested, or a failure to pay invoices from DWK in a current or timely manner, shall be good cause for DWK to withdraw from representing Client in this matter, and to terminate the Attorney-Client relationship and this Agreement. In the event of termination of this Agreement, Client may retain Attorney for continued representation in this matter and/or for representation in any other matter. Any unused amount of the Retainer Deposit remaining at the conclusion of DWK's services shall be refunded to the Payor.

Except as hereinafter provided, Payor agrees to pay Attorney three hundred twenty-five dollars (\$325) per hour for shareholders, special counsel and of counsel; two hundred fifty dollars (\$250) per hour for associates; and one hundred seventy-five dollars (\$175) per hour for paralegals and law clerks.

Substantive communications advice (telephone, voice-mail, e-mail) is billed in a minimum increment of one-tenth (.1) of an hour, except for the first such advice in any business day, which is charged in a minimum of three-tenths (.3) of an hour. In the course of travel it may be necessary for Attorney to work for and bill other clients while in transit. If, during the course of representation of Client, an insurance or other entity assumes responsibility for payment of all or partial fees of Attorney on a particular case or matter,

Payor shall remain responsible for the difference between fees paid by the other entity and Attorney's hourly rates as specified in this Agreement unless otherwise agreed by the parties.

Payor further agrees to reimburse Attorney for actual and necessary expenses and costs with respect to providing the above services, including support services such as copying costs, express postage, and facsimile transmittals. Payor agrees that such actual and necessary expenses may vary according to special circumstances necessitated by request of Client or emergency conditions which occasionally arise. All costs passed through to Payor shall be billed at Attorney's actual cost.

Attorney shall send Payor and Client an invoice for fees and costs incurred every calendar month. If Client disagrees with any amounts on the invoice, Client shall notify Attorney within ten (10) days of receipt of invoice. The invoice sent to Payor will not include any information or itemization of the specific tasks Attorney has completed relative to Attorney's representation of Client, other than the total amount of time and fees due for the period covered by the invoice, plus an Itemized list of expenses to be reimbursed. Client agrees to waive any attorney-client privilege as to this summary billing information. Payor shall pay Attorney's invoice within fifteen (15) days after each invoice's date.

Client acknowledges that Payor will be responsible for paying Attorney's fees and costs under this Agreement, whether Client and Payor are aligned in their interests or whether their interests diverge over the course of the Reorganization. Client, Payor, and Attorney further acknowledge that notwithstanding this payment arrangement, the only attorney-client relationship created by this Agreement is between Attorney and Client. Attorney may accept payment from Payor for representation of Client, and in accordance with Rule 3-310(f) of the California Rules of Professional Conduct for Attorneys, represents that such arrangement will not interfere with Attorney's independence of professional judgment or with the Client-Attorney relationship, and information relating to representation of Client is protected as required by Business and Professions Code section 6068, subdivision (e). Payor will have no right to information regarding Client's matter, no right to information regarding the specific tasks or services Attorney has performed for Client and for which Payor will pay or has paid, nor any right to direct Attorney in providing the services under this Agreement, unless specifically approved by Client.

Attorney agrees to keep current and in force at all times a policy covering incidents of legal malpractice.

It is expressly understood and agreed to by all parties that Attorney, while carrying out and complying with any of the terms and conditions of this Agreement, is an independent contractor and is not an employee of the Client or the Payor.

If Attorney becomes aware of any potential or actual conflicts of interest, Attorney will inform Client of the conflict and comply with the legal and ethical requirements to fulfill its duties of loyalty and confidentiality to Client. If Client has any question about whether Attorney has a conflict of interest in its representation of Client in any matter, it may contact Attorney or other legal counsel for clarification. Through this Agreement, Attorney also provides written disclosure to Client of the relationship established through this Agreement between Attorney and Payor. Client, Payor, or Attorney may terminate this Agreement by giving thirty (30) days written notice of termination to the other parties; provided however, that if Payor exercises its rights to terminate this Agreement, Attorney will discontinue all services under this Agreement unless and until Client provides direction and authorization to continue under a new or existing legal services agreement.

This is a written fee agreement, generally required in all attorney engagements by California Business and Professions Code section 6148. PLEASE READ IT CAREFULLY. Attorney advises Client and Payor that Client and/or Payor have the right to have an independent lawyer review this entire Agreement prior to signing this Agreement.

Each signatory to this Agreement warrants and represents that he/she is competent and authorized to enter into this Agreement on behalf of that respective party for whom he/she purports to sign, and that no other signatory is required to bind that party to this Agreement. The parties further agree that they have read and understood the foregoing terms and agree to them as of the date Attorney first provided services.

This Agreement may be signed in separate counterparts, which together shall constitute one agreement. Signatures received by facsimile or e-mail shall be considered valid.

This Agreement shall not affect any other existing professional services agreement that may exist between Attorney and Client for other legal services.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement for Professional Services & Payment of Fees.

CLIENT
City of Brisbane

Clay Holstine, City Manager

Date

ATTORNEY

Dannis Woliver Kelley

Marilyn J. Cleveland

Marilyn J. Cleveland, Shareholder

Sept. 15, 2016

Date

PAYOR

Universal Paragon Corporation

Date

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CLIENT

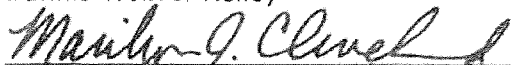
City of Brisbane

Clay Holstine, City Manager

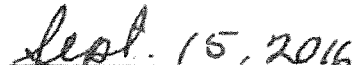
Date

ATTORNEY

Dannis Woliver Kelley



Marilyn J. Cleveland, Shareholder



Date

PAYOR

Universal Paragon Corporation

Date

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Attorney agrees to keep current and in force at all times a policy covering incidents of legal malpractice.

It is expressly understood and agreed to by all parties that Attorney, while carrying out and complying with any of the terms and conditions of this Agreement, is an independent contractor and is not an employee of the Client or the Payor.

If Attorney becomes aware of any potential or actual conflicts of interest, Attorney will inform Client of the conflict and comply with the legal and ethical requirements to fulfill its duties of loyalty and confidentiality to Client. If Client has any question about whether Attorney has a conflict of interest in its representation of Client in any matter, it may contact Attorney or other legal counsel for clarification. Through this Agreement, Attorney also provides written disclosure to Client of the relationship established through this Agreement between Attorney and Payor. Client, Payor, or Attorney may terminate this Agreement by giving thirty (30) days written notice of termination to the other parties; provided however, that if Payor exercises its rights to terminate this Agreement, Attorney will discontinue all services under this Agreement unless and until Client provides direction and authorization to continue under a new or existing legal services agreement.

This is a written fee agreement, generally required in all attorney engagements by California Business and Professions Code section 6148. PLEASE READ IT CAREFULLY. Attorney advises Client and Payor that Client and/or Payor have the right to have an independent lawyer review this entire Agreement prior to signing this Agreement.

Each signatory to this Agreement warrants and represents that he/she is competent and authorized to enter into this Agreement on behalf of that respective party for whom he/she purports to sign, and that no other signatory is required to bind that party to this Agreement. The parties further agree that they have read and understood the foregoing terms and agree to them as of the date Attorney first provided services.

This Agreement may be signed in separate counterparts, which together shall constitute one agreement. Signatures received by facsimile or e-mail shall be considered valid.

This Agreement shall not affect any other existing professional services agreement that may exist between Attorney and Client for other legal services.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement for Professional Services & Payment of Fees.

CLIENT

City of Brisbane

Clay Holstine, City Manager

Date

ATTORNEY

Dannis Woliver Kelley

Marilyn J. Cleveland

Marilyn J. Cleveland, Shareholder

Sept. 15, 2016

Date

PAYOR

Universal Paragon Corporation

Date